

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FILED
U.S. DISTRICT COURT
DISTRICT OF MASS.

2004 OCT 18 P 1:

U.S. DISTRICT COU
DISTRICT OF MAS.

ANTHONY F., by and through his next
friends, EDWARD F. and LISA F.,
LINDA S. AND DEANE S.,

Plaintiffs,

v.

SCHOOL COMMITTEE of the CITY of
MEDFORD,

Defendant.

C.A. No. 04-10610-RWZ

**DEFENDANT'S MOTION TO DISMISS AND/OR
FOR SUMMARY JUDGMENT**

Pursuant to Federal Rules of Civil Procedure, Rule 56, defendant School Committee of the City of Medford ("Medford") hereby moves this Court to enter summary judgment in its favor on the grounds that there are no genuine, material issues of fact and Medford is entitled to judgment as a matter of law since:

(1) plaintiffs' claims for attorneys' fees and costs incurred are barred by the applicable statute of limitations;

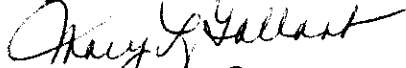
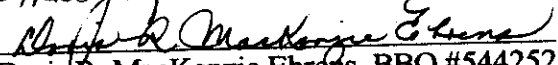
(2) the plaintiffs are not 'prevailing parties' entitled to an award of attorneys' fees or costs incurred in their Bureau of Special Education ("BSEA") appeal which was resolved by private settlement; and

(3) the Complaint fails to state a claim upon which relief can be granted under the under the Massachusetts Tort Claims Act .

This motion is supported by the pleadings and papers on file herein and by the memorandum of law and the Affidavit of Gail Bernstein which are filed herewith.

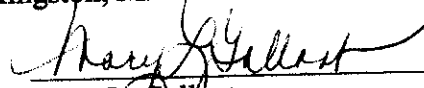
DATED at Quincy, Massachusetts this 12th day of October, 2004.

SCHOOL COMMITTEE of the CITY OF MEDFORD,
By Its Attorneys,



Doris R. MacKenzie Ehrens, BBO #544252
Mary L. Gallant, BBO # 554721
Murphy, Hesse, Toomey and Lehane, LLP
300 Crown Colony Drive, P.O. Box 9126
Quincy, MA 02269-9126
(617) 479-5000

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been served this 14th day of October, 2004, by first-class mail, postage prepaid upon counsel for the plaintiffs, John L. Geary, Geary & Associates, 161 Summer Street, Kingston, MA 02364.


Mary L. Gallant